



DATE ISSUED: March 17, 2004 REPORT NO. CCDC-04-07  
CCDC-04-13

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Honorable Mayor and Members of the City Council  
Docket of March 23, 2004

SUBJECT: CONCURRENT AND JOINT PUBLIC HEARINGS on the Amended and Restated Owner Participation Agreement with McKinnon Properties, Inc.; Amendments to the Centre City Redevelopment Plan and Marina Planned District Ordinance; Marina Development Permit 2003-33 for the KUSI Mixed Use Project, including the Granting of Exceptions and Design Review of the Basic Concept/Schematic Drawings; Conditional Use Permit 2003-33; and Comprehensive Sign Plan 2003-33--Block Bounded by Island, J, First and Second Avenues--Marina Sub Area of the Centre City Redevelopment Project

REFERENCE: Attachments 1, 1B, 1D and 1F to the Amended and Restated OPA  
Exhibit A - Basic Concept/Schematic Drawings  
Exhibit B - Conditional Use Permit 2003-33  
Exhibit C - Comprehensive Sign Plan 2003-33  
Exhibit D - Marina District Project Information  
Exhibit E - Marina Development Permit 2003-33  
Exhibit F - Report to the City Council for the Proposed Ninth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (the "KUSI Mixed-Use Development Amendment")  
Amended and Restated Owner Participation Agreement  
Mitigated Negative Declaration of Environmental Impacts  
Summary Pertaining to the Proposed Sale of Certain Property Within the Marina Sub Area  
KUSI Mixed-Use Development--Estimate of Re-Use Value

STAFF CONTACT: Pamela M. Hamilton, Senior Vice President  
Brad Richter, Principal Planner

#### SUMMARY

Issue - Should the City Council and Redevelopment Agency take the actions recommended in this memorandum to provide for the redevelopment of the block bounded by Island, J, First and Second Avenues within the Marina Sub Area of the Centre City Redevelopment Project?

Staff Recommendation

That the Redevelopment Agency take the following actions:

1. Certify that the Redevelopment Agency has reviewed and considered information contained in the Master Environmental Impact Report for the Centre City Redevelopment Project (MEIR), the Subsequent Environmental Impact Report to the MEIR and the Secondary Study and Mitigated Negative Declaration of Environmental Impacts for the KUSI Mixed Use Development and the associated implementation activities, including Amendments to the Redevelopment Plan and Marina Planned District Ordinance, Marina Development Permit 2003-33, Conditional Use Permit 2003-33, Comprehensive Sign Plan 2003-33 and the Amended and Restated Owner Participation Agreement, make certain findings regarding the environmental impacts, approve and adopt the Mitigated Negative Declaration and adopt a Reporting and Monitoring Program;
2. Approve and recommend to the City Council its approval of the proposed Ninth Amendment to the Centre City Redevelopment Plan (the "KUSI Mixed Use Development Amendment") and approve and submit to the City Council the Report to the City Council;
3. Approve Marina Development Permit 2003-33, including the Granting of Exceptions and Design Approval of the Basic Concept/Schematic Drawings; and
4. Approve the sale of certain property in the Centre City Redevelopment Project to McKinnon Properties, Inc., approve the Amended and Restated Owner Participation Agreement and make certain findings regarding the sale of the property.

That the City Council take the following actions:

1. Certify that the City Council has reviewed and considered information contained in the Master Environmental Impact Report for the Centre City Redevelopment Project (MEIR), the Subsequent Environmental Impact Report to the MEIR and the Secondary Study and Mitigated Negative Declaration of Environmental Impacts for the KUSI Mixed Use Development and the associated implementation activities, including Amendments to the Redevelopment Plan and Marina Planned District Ordinance, Marina Development Permit 2003-33, Conditional Use Permit 2003-33,

- Comprehensive Sign Plan 2003-33 and the Amended and Restated Owner Participation Agreement, make certain findings regarding the environmental impacts, approve and adopt the Mitigated Negative Declaration and adopt a Reporting and Monitoring Program;
2. Approve the proposed Ninth Amendment to the Centre City Redevelopment Plan (the "KUSI Mixed Use Development Amendment");
  3. Approve the Amendment to the Marina Planned District Ordinance providing for the KUSI Mixed Use Development;
  4. Approve Conditional Use Permit 2003-33 to permit the KUSI Broadcast Studio to be located within the KUSI Mixed Use Development;
  5. Approve Comprehensive Sign Plan 2003-33 for the KUSI Mixed Use Development; and
  6. Approve the sale of certain property in the Centre City Redevelopment Project to McKinnon Properties, Inc., approve the Amended and Restated Owner Participation Agreement and make certain findings regarding the sale of property;

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Planning Commission Recommendation - The Planning Commission considered the amendments to the Centre City Redevelopment Plan and Marina Planned District Ordinance and the proposed permits for the KUSI development on March 4, 2004. By a vote of 5-Yes and 1-No the Planning Commission recommended approval of staff's recommendation, with the request that consideration be given to simplifying the rooftops of the building to respect but not imitate the historical rooftops of San Diego, and to clarify what the process would be to obtain a permit for an event in the public plaza.

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Centre City Development Corporation (CCDC) Recommendation - On February 25, 2004, the CCDC Board of Directors voted 4-Yes, 1-No, and 2-Recused in favor of the recommendations presented in this memorandum.

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Centre City Advisory Committee (CCAC) Recommendation - On February 18, 2004, the CCAC voted in favor of the recommendations presented in this memorandum. The vote was 15-Yes, 5-No, and 1-Recused. Because there is an amendment to the Redevelopment Plan as part of the recommendations, the vote of the Project

Area Committee (the "PAC", a sub-set of the CCAC) must be reported. The PAC vote was 14-Yes, 5-No, and 1-Recused. The sentiment expressed by most of those voting against the recommendations was a concern that the architecture was not appropriate for downtown.

Other Recommendations - None.

Fiscal Impact - The development which is the subject of the existing Owner Participation Agreement (the "OPA") was anticipated to generate approximately \$785,000 per year in tax increment. The proposed development is anticipated to generate approximately \$1,545,000 per year in tax increment and a range of \$1,945,000 to \$2,514,000 per year in Transient Occupancy Taxes.

The existing OPA and the proposed Amended and Restated Owner Participation Agreement (the "Amended and Restated OPA") require that McKinnon Properties, Inc. (the "Developer") design, construct and maintain an expansion of the Martin Luther King, Jr. Promenade (the "J Street Plaza") into the to-be-vacated J Street right of way between First and Second avenues, at estimated costs to the Developer of \$1,130,000. Such expansion costs would otherwise be the obligation of the Agency.

The existing OPA provided that the Agency would transfer 16 sq.ft. of underlying fee interest in First Avenue, and fee interest in a 3,200 sq. ft. parcel in vacated J Street, to the Developer for construction of the below grade garage. The sales price for these fee interests was \$100 in exchange for the Developer's more than \$1 million investment in the J Street Plaza. The Amended and Restated OPA transfers all Agency-owned underlying fee interests in adjacent streets and fee interest in the 3,200 sq. ft. parcel in vacated J Street (the "Sales Parcel") to the Developer for a cash payment to the Agency of \$300,000.

The Amended and Restated OPA provides a "Grant of Event Easement" on 5,270 sq. ft. of Agency/City-owned property within the J Street Plaza which, when combined with the 5,560 sq. ft. of the Park Easement area owned by the Developer, provides an Event Area of 10,830 sq. ft. within the 18,078 sq. ft. J Street Plaza for the use of KUSI-TV for up to 80 hours per month pursuant to a Conditional Use Permit.

Keyser Marston and Associates estimates the fair reuse value of all interests to be conveyed by the Agency to the Developer (fee interest in the Sales Parcel, the underlying fee interests in adjacent streets and the Grant of Event Easement) to be \$661,000, while the Agency will be receiving \$300,000 in cash and an "in-kind" contribution of \$1,130,000 in park design, improvements and maintenance.

## BACKGROUND

On August 15, 2000, the City Council/Redevelopment Agency approved a Mitigated Negative Declaration of Environmental Impacts, an amendment to the Centre City Redevelopment Plan, an amendment to the Marina Planned District Ordinance, Marina Development Permit 99-0485, Conditional Use Permit 99-0485 to allow the KUSI Broadcast Studio to be located on the block, Comprehensive Sign Plan 99-0485 for the KUSI Mixed Use Project, and an Owner Participation Agreement (OPA) with McKinnon Properties, Inc. These actions were required to accommodate development of the block as minimum 60% residential where otherwise minimum 80% residential would have been required.

The Agency subsequently condemned the underlying fee interests in J Street to accommodate the vacation of J Street and conveyance of the northerly 32-feet to the Developer to permit an enlargement of the development site for below-grade parking and to create the J Street Plaza as an expansion of King Promenade.

In August 2001, CCDC processed a revised Marina Development Permit 99-0485 due to certain alterations to the massing and design of the building; such revisions were deemed not to require any further documentation other than the revised Permit.

In 2002, McKinnon Properties, Inc., requested that the OPA, Marina Planned District Ordinance, Centre City Redevelopment Plan and development permits (and all other associated documents/entitlements/environmental analysis, as required) be amended again to permit a hotel component in the project. On September 4, 2002, the Centre City Advisory Committee voted 14-1 to support the hotel proposal by McKinnon Properties, Inc. with the requirement that the hotel use be limited to a Rosewood Hotel or equivalent "boutique, 5-star" hotel and that the garage and exterior of the development, as approved by Marina Development Permit 99-0485, not be altered.

On January 15, 2003 the CCDC Board recommended to the Redevelopment Agency that amendments to the Owner Participation Agreement and land use regulations be initiated to permit hotel use on the block, consistent with the CCAC's recommendations. The Board further recommended that a Payment Agreement be required of the Developer to cover all third-party costs of preparing the amendments and that the amendment to the OPA require the Developer's payment to the Agency of \$300,000 for the purchase of the Sales Parcel and certain underlying fee interests in adjacent streets. The Agency concurred with the Board's recommendations on February 11, 2003, and the plan amendments and preparation of a Draft Mitigated Negative Declaration of Environmental Impacts were initiated. During this interim, refinements have been made to the street-level design of the proposed development and the design of the J Street Plaza has been revised to a more open plan providing greater pedestrian flow to Second Avenue from King Promenade and First Avenue.

DISCUSSION OF DEVELOPMENT PROPOSAL

The proposed KUSI Mixed Use Development is located on a 66,400 square foot Site bounded by First Avenue on the west, Island Avenue on the north, Second Avenue on the east, and to-be-vacated J Street on the south. The proposed development consists of a 370-foot tall, 25-story building containing a 123-room hotel, KUSI Television studio and corporate offices, approximately 42 residential condominiums, approximately 9,900 square feet of bar, restaurant and retail uses, and approximately 480 parking spaces located in three levels of underground parking.

This new proposal, which is the subject of the amendments and permits discussed in this report, contains the following changes to the previously approved development (and is generally consistent with the proposal reviewed by the Agency on February 11, 2003):

<u>Current Hotel Proposal</u>	<u>Approved Marina Development Permit 99-0485</u>
218,824 SF of ultra luxury hotel use, representing 57% of the development (123 rooms plus spa, board room, etc.)	-0-
72,140 SF of KUSI studio/offices	130,400 SF of KUSI studio/offices
9,883 SF bar, restaurant, retail	21,600 bar, restaurant, retail
86,393 SF for-sale condominiums (42 units)	238,000 SF apartments (194 units)
Not to Exceed Sq.ft. Above Grade: 390,000SF	Square Footage Above Grade:390,000SF
22% Residential/78% Non-Residential	61% Residential/39% Non-Residential

The proposed construction of a high-density mixed-use/hotel development on this Site advances the following Visions and Goals of the Centre City Community Plan and Objectives of the Centre City Redevelopment Project:

- Promote the growth & vitality of Centre City as the primary business, educational, cultural & entertainment magnet;
- Provide formal & informal places where downtown residents & workers mingle with visitors;
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- Provide for development that results in an attractive urban living/working environment; and.
- Eliminate blight & environmental deficiencies.

The Site is surrounded by the Harbor Club condominium towers to the southeast, the King Promenade to the south, Children's Park to the west, the Horizons twin-tower condominium project to the northwest, the 101 Market low-rise apartment project to the north, and low-rise residential and SRO projects to the east.

The Site is located within the Marina Planned District, and the Marina Planned District Ordinance ("PDO") designation for this Site requires that the Site be developed either pursuant to Marina Planned District Permit 99-0485 approved in 2000 (which was 60% residential), or as development containing a minimum of 80% residential use. Because the proposed development reduces the residential percentage of the building to 22%, amendments to the Marina PDO and the Centre City Redevelopment Plan are required. The following is a list of the required approvals for this development:

1. Adoption of the Mitigated Negative Declaration of Environmental Impacts;
2. Amendment to the Centre City Redevelopment Plan to allow the proposed KUSI Mixed Use development as an alternative to the existing 80/20 land use designation;
3. Amendment to the Marina Planned District Ordinance to allow the proposed KUSI Mixed Use development as an alternative to the existing 80/20 land use designation;
4. Marina Development Permit 2003-33 with Exceptions for FAR, height, streetwall height, active streetwall, and solar access, along with Design Review of the Basic Concept/Schematic Drawings;
5. Conditional Use Permit 2003-33 to permit a television broadcast studio (consistent with the earlier-approved Conditional Use Permit 99-0485);
6. Comprehensive Sign Plan 2003-33 to allow two outdoor video screens and a reader board associated with the television studio (generally consistent with the earlier-approved Comprehensive Sign Plan 99-0485);
7. Execution of the Amended and Restated Owner Participation Agreement; and
8. Vacation of J Street between First and Second avenues (to be formally processed with a tentative map).

DEVELOPMENT TEAM

The development team includes the following members:

FIRM / ROLE	CONTACT	OWNERSHIP
Property Owner/ Major Occupant: McKinnon Properties, Inc. and McKinnon Broadcasting	Michael Dean McKinnon	Michael Dean McKinnon (privately held company)
Project Manager: Allegis Development	Kip Howard	Kip Howard (privately held company)
Architect: Callison Partnership	Jim Smotherman	William Karst, CEO Steve Epple, CFO Robert Tindall, President (privately held company)

PROPOSED AMENDED AND RESTATED OPA, REVISED BASIC CONCEPT/  
 SCHEMATIC DRAWINGS, NEW PERMITS AND AMENDED LAND USE REGULATIONS

PROPOSED AMENDED AND RESTATED OPA

The Amended and Restated OPA updates certain technical provisions in the OPA consistent with more recent Agency agreements and makes the following changes to the business terms:

1. The Developer's purchase price for the 3,200 sq. ft. Sales Parcel within vacated J Street and the Agency-owned underlying fee interests in the streets adjacent to the Site is \$300,000.
2. The Scope of Development is revised consistent with Marina Development Permit 2003-33, Conditional Use Permit 2003-33 and Comprehensive Sign Plan 2003-33, which incorporate the refined design of the street level of the development, the revised design for the J Street Plaza and a more accurately defined Event Easement area.
3. The Grant Deed requires that the hotel be operated and managed by Rosewood Hotels and Resorts, LLC, or by an equivalent 5-Star, boutique hotel operator which may be an independent operator affiliated with a hotel organization such as The Leading Hotels of the World or Small Luxury Hotels of the World, and that the hotel

continuously adhere to the criteria and standards required to be eligible for a Mobile 5-Star rating or a AAA 5-Diamond rating.

4. The Schedule of Performance is revised to accommodate the hiatus in the project caused by the proposal for hotel use and the need to amend land use regulations and permits. The Schedule requires conveyance of the Sales Parcel and underlying fee interests in the streets on or before 365 days from the date the Agency executes the Amended and Restated OPA (and a construction start within 30 days thereafter).
5. The existing OPA provision that the Developer would have the opportunity to redesign and resubmit plans for the development should such redesign become necessary due to the Agency's inability to acquire the interests to be conveyed to the Developer is removed since the Agency has completed all acquisition activities for the Site.

The revised exhibits to the Amended and Restated OPA are attached to this memorandum and illustrate key points to the transaction. These exhibits are:

- A. Attachment No. 1--Site Map, illustrating the Sales Parcel, a parcel of 3,200 sq. ft. (32' x 100') created from a portion of to-be-vacated J Street. A 4,000 sq. ft. parcel (40' x 100') immediately adjacent and east of the Sales Parcel will revert to the Developer upon vacation of the street in that McKinnon Properties, Inc. is the owner of the underlying fee interest to the centerline of J Street in that location. The Developer will retain a 3,200 sq. ft. (32' x 100') portion of this 4,000 sq. ft. parcel and convey an 800 sq. ft. parcel (8' x 100') to the Agency for inclusion in the J Street Plaza. These land transfers "square-off" the property boundary between the development Site and the Park area and create a development site of 66,400 sq.ft.
- B. Attachment No. 1B-Page 1--Open Space Map, illustrating that the Developer will provide to the Agency a Park Easement for 5,560 sq. ft. of the 6,400 sq. ft. added to the Developer's Site by the vacation of J Street and the Agency's conveyance of the Sales Parcel (Park Parcel A). The portion of the 6,400 sq. ft. not placed into park easement will be the location of an outdoor seating area for a restaurant within the development. This Attachment also illustrates the 5,270 sq.ft. Agency/City-owned area within vacated J Street to be developed as part of the J Street Plaza over which the City is granting an Event Easement (Park Parcel B). Park Parcel A and Park Parcel B together become the Event Area available for use by the Developer pursuant to the terms of CUP No. 2003-33.
- C. Attachment No. 1B-Page 3--Open Space Map, illustrating the Park Area (co-terminus with the Developer's Landscape Maintenance Area) which is required to be designed, constructed and maintained by the Developer as an expansion of King Promenade.

- D. Attachment No. 1B--Page 2--Open Space Map, illustrating the Harbor Club's Landscape Maintenance Area after that portion of Harbor Club's existing maintenance area within and north of the J Street right of way is transferred to the Developer.
- E. Attachment No. 1D--Map of Underlying Fee Interests to be Conveyed by the Agency, illustrating those underlying fee interests in adjacent streets acquired by the Agency from the Heirs of Alonzo Horton which will be conveyed to the Developer.
- F. Attachment No. 1F--Map of Underlying Fee Interests to be Conveyed by the Developer, illustrating those underlying fee interests in J Street to be conveyed by the Developer to the Agency so that, upon the vacation of J Street, the Agency will own the illustrated 800 sq. ft. parcel in fee. This parcel is part of the J Street Plaza.

#### AMENDMENTS TO THE CENTRE CITY REDEVELOPMENT PLAN AND MARINA PLANNED DISTRICT ORDINANCE

The proposed amendments would allow, as an alternative to development otherwise required, the specific KUSI Mixed Use Development which is the subject of Marina Development Permit 2003-33. The development requires these amendments in order to allow for an increase in the non-residential land use percentage from the permitted 20% (or 25% with Exception) to the proposed 78%. This will allow the location of the hotel and KUSI broadcast studio and corporate offices within the building. These amendments require public hearings before the Planning Commission and City Council.

The proposed amendments would add the following language to both the Redevelopment Plan and the Marina PDO:

“On the block bounded by First Avenue, Second Avenue, Island Avenue and J Street, an alternative to eighty percent (80%) residential/twenty percent (20%) nonresidential as shown in Figure 1 of Chapter X, Article 3, Division 20 of the San Diego Municipal Code may be the specific development which is the subject of Marina Development Permit No. 2003-33.”

The Marina District is designed to be *primarily*, not *exclusively*, a residential district. In fact, the two blocks located to the west across First Avenue, which now contain the Children's Park and Horizons condominium project, are zoned Hotel/Residential and were the subject of an approved hotel/residential development in the 1980's. Within the Marina District, all properties may contain up to 25% commercial uses. These commercial uses include restaurants and retail uses which would typically generate more traffic, parking demand, and pedestrian activity than office uses do. In an urban downtown setting, land uses often

inter-mix without significant adverse impacts. Retail, restaurant, entertainment, office, hotel and residential uses are often located adjacent to each other and within the same building. The KUSI Mixed Use Project is the epitome of a mixed-use project as it contains hotel, office, television studio, retail/restaurant, and residential uses all within one building.

The location of the project, across Harbor Drive from the Convention Center and close to a variety of residential and mixed-use developments, lends itself to such a unique and diverse project. While the hotel will serve the convention center with needed hotel rooms, the television studio and retail/restaurant uses will serve the surrounding residential community as well as tourists. In addition, the offices will provide much desired office uses within the Centre City area.

## MARINA DEVELOPMENT PERMIT

### **Design Review**

The development requires approval of a Marina Development Permit under the Marina Planned District Ordinance. As part of the Permit approval, the development requires the approval of specific Exceptions to the development regulations of the Marina PDO. Because of the request for Exceptions, the development requires public hearings before the CCDC Board and the Redevelopment Agency. This review includes the design review approval of the Basic Concept/Schematic Drawings. Proposed Marina Development Permit 2003-33 meets the requirements of the earlier recommendations in support of the hotel proposal by keeping the exterior of the development consistent with the earlier-approved Marina Development Permit 99-0485.

The KUSI Mixed Use development utilizes a single tower which is oriented northwest/southeast in order to maximize the preservation of views from the northwest (the Horizons and Renaissance condominium towers) and the southeast (the Harbor Club condominium towers). The development utilizes a tall base element (approximately 100-110 feet tall) at the northwest corner of the site, then steps back 20 feet to the tower which utilizes a three-tiered stepped configuration to reduce the mass of the upper tower consistent with the Marina Urban Design Plan and PDO. A lower one-story (25 feet tall) podium is located south of the main podium and tower. Open space areas are provided at the second level for the commercial and office uses and at the sixth level for the hotel/residential uses in the tower. The studio and various commercial uses occupy the first floor (with mezzanine), the offices occupy floors 2-5, the hotel rooms occupy floors 6-19, with the condominium units located on floors 8-24.

The Site is intersected by an earthquake fault which crosses the northeast corner of the site in a northwest-southeast orientation. No buildings, including basement garage areas, are allowed to be constructed over, or within a specified setback from, this fault line. This area has therefore been designed to be an open entry driveway area characterized by

enhanced paving and landscaping; a decorative fence enhanced with columns, pergolas, and planters is located along the Island Avenue and Second Avenue sidewalks.

The architecture of the development utilizes the distinctive historic style associated with the California mission style, adapted to a high-rise structure, through the use of arch forms, hipped roofs with glazed tile, trellis pergolas, and balconies with iron railings. Materials include a stone finish at the podium level with stucco finish on the tower. The podium, tower, and stepped upper tower present building proportions which compliment the architecture.

### **Exceptions**

Under the Marina Planned District Ordinance, each block contains Floor Area Ratio (FAR) and building height limitations. Each of these standards may be increased upon the meeting of specific criteria or findings. In addition, Exceptions to other development standards within the PDO may be granted upon meeting specific criteria. A vast majority of projects within the Marina District have applied for, and obtained approval of, similar exceptions, as the Marina PDO provisions for exceptions is intended to provide incentives for unique and superior project design, rather than as a relief for a particular hardship (similar to variances granted elsewhere).

The project has requested certain Exceptions to the Marina PDO, as follows:

#### 1. Increase in the FAR from 6.0 to 6.5

The project is proposing a FAR of 6.5. The PDO allows this increase from the base 6.0 FAR when at least 3 of 7 criteria listed in Section 103.2012B4c are met. The project meets the following 4 criteria:

- a. *At least one full-level of underground parking is provided.*

The project provides three full levels of parking in an underground structure.

- b. *The required ground-floor activity increases from fifty percent (50%) to sixty percent (60%) of the street frontage. Such increase in activity shall be consumer-oriented commercial or residential land use.*

The building provides commercial activity, including restaurants, studio observation areas, and retail storefronts along 75% of the street frontages.

- c. *No Redevelopment Agency financial assistance, excluding off-site improvements, is required for the project.*

The developer has not requested any Agency financial participation in this project. The developer will be responsible for relocating utilities outside of the vacated J Street as necessary, installing all park and plaza improvements, and installing public

improvements along the street frontages.

- d. *The site is a receiver of a major public amenity including park, plaza, public art and sculpture or other equivalent amenity designed primarily for public use.*

The development includes the creation of a public plaza south of the building in the to-be-vacated J Street right-of-way. This plaza will adjoin, and expand, King Promenade to the south. While KUSI will be permitted to conduct special events within this plaza, a majority of the time the public will have full access to the plaza.

It should be noted that only the 60,000 sq.ft. block currently owned in fee by the Developer is being used to calculate FAR.

## 2. Increase in the height from 160 feet to 370 feet

The PDO establishes the base height for this block at 160 feet, allowing an increase (up to the 500 foot FAA limit) under Section 103.2012B2 after four criteria are evaluated. These 4 criteria serve as a method of evaluating whether the granting of an increase in height is warranted by the project complying with one or more of these performance objectives. Compliance with all four of the criteria is not required, but the granting of an increase in height is an incentive for projects to provide these design amenities.

- a. *Applicant shall provide one (1) or more parks, setback areas, or widened and enhanced public right-of-way. Such areas shall be landscaped by the applicant. Their location shall complement the adjoining right-of-way and while either public or private in nature, shall be designed to be visually or physically enjoyed by residents, residents of adjoining structures and the general public.*

The J Street public plaza will contain over 18,000 square feet of public plaza space which expands King Promenade in this area. The plaza has full access to sunlight after the early morning hours and is located adjacent to First Avenue, allowing its enjoyment by residents and tourists alike.

- b. *Applicant's project shall increase nonresidential or residential activity at the street level of the development from fifty percent (50%) of the total frontage to all the remaining street frontage with the exception of vehicular access and truck service delivery to serve the site. Such activity shall be directly accessible to the public right-of-way. Entrances to activity shall be provided at intervals which are approximately fifty (50) feet or less in distance apart.*

As mentioned previously, commercial and studio observation uses are located along the entire First Avenue and Island Avenue frontages, in addition to the entire J Street Plaza. The only inactive area within the building is the garage wall

surrounding the loading and service area off Second Avenue, which occupies 60% of this streetwall (including the driveway access). In order to mitigate this wall, a series of showcase windows will be provided to enhance the pedestrian experience. The details of these windows or showcases have not been determined, but they will require approval of CCDC as part of the Design Development phase of the development.

- c. *Applicant's project shall accommodate all, or a substantial amount of, parking needed to serve the proposed development below-grade.*

Three full levels of underground parking (containing 480 spaces) are provided.

- d. *Applicant shall mitigate the mass and scale of the project by reducing the size of the floor plate and creating a more slender tower which enhances view corridors or reduces the effect of shadow on adjoining developments.*

The project provides a single tower which, along with its orientation, enhances view corridors for residential projects to the northwest and southeast. While the project does cast a shadow on the 101 Market mixed-use development to the north, the tower is narrower than otherwise permitted, steps at the upper elevation, and is offset by the open site area at the northeast corner of the site (where the earthquake fault exists). The amount of shading is not unusual for a high-rise project which is anticipated with the 6.0 - 6.5 FAR allowed for the site. In addition, other nearby high-rise projects cast similar shadows.

The project provides an interesting tower shape which reduces its mass (from 11,640 square foot floor plates at the lower tower to a 4,400 square foot floor plate at the upper floor). The generous use of balconies, trellis elements, and a sloping tile roof all enhance the tower architecture.

The project meets all four of the 4 performance objectives established for evaluating an Exception for an increase in height, with the mitigated exception at the loading area wall along Second Avenue. Given the project's use of a single tower with optimum location and orientation, staff recommends that the Exception be approved.

### 3. Increase in the streetwall height from 50 to 110 feet.

The PDO limits streetwall heights to a maximum of 50 feet. Above this 50 foot limit, any towers are required to step back a minimum of 20 feet, except one frontage of a tower may not be required to meet this setback if it conflicts with required fire and safety access. The Fire Department requires that at least one side of a building, up to 100 feet in height, be located within 15-25 feet of a Fire Lane or travel lane on a street.

The KUSI Mixed Use Project provides a 100-110 foot streetwall along portions of First Avenue and Island Avenue. While only one of these taller streetwalls is required for Fire Department access, the overall design of the project is enhanced by a symmetric podium with dual 20 foot setbacks for the tower off both streets. The higher streetwall occurs for 175 feet of the 300 foot long First Avenue frontage and 120 feet of the 200 foot long Island Avenue frontage, which prevents the appearance of an overwhelming streetwall along the length of either of these frontages. The building's overall proportions are enhanced by the creation of this taller base.

4. Reduction of the percentage of active streetwall from 50% to 34% for the Second Avenue streetwall.

The PDO requires that at least 50% of the streetwall along each street frontage contain active uses such as residential units or commercial space. The Second Avenue streetwall, which runs only 130 feet long due to the earthquake fault location, contains only 34% activity with the restaurant along the southeast corner of the building. The remainder of the frontage contains the garage wall for the service area of the project, which also serves as storage for the vans and other equipment of the television studio operations. The unique television broadcast studio land use on the Site requires this garage space to accommodate the news vans with the transmitting equipment. The PDO requires that any blank walls be enhanced with architectural detailing, landscaping or other features. This wall will be architecturally detailed, contain a stone finish material, and will contain "showcases" containing items related to the studio and other businesses on the Site to provide pedestrian interest. Since there is a limited streetwall along this frontage due to the fault line, the reduction in the amount of active uses is acceptable subject to the streetwall detailing described above.

5. Modification of the Solar Access Criteria (allowing more than 50% of the Island Avenue sidewalk to be shaded for over an hour).

The Marina PDO requires that no more than 50% of the sidewalk on the opposite side of the street be shaded for no more than one hour between the hours of 11 a.m. and 2 p.m. during the Winter Solstice. The applicant has provided a Solar Study which shows that this standard is exceeded, which is typical for high-rise developments in the area. All of the high-rise projects constructed within the last four years, as well as the mid-rise projects located on the north end of blocks, have obtained Exceptions to exceed this standard.

The use of a single tower, the angled orientation of the tower, the proposed 140 foot width of the tower (less than the permitted 160 foot width) all reduce potential shadows from the project. The Exception process allows for the evaluation of individual projects to determine if the intent of the ordinance is being achieved. The KUSI Mixed Use Project, while

exceeding the standard shadow limitation for the sidewalk along the north side of Island Avenue, does provide greater sun access than typically provided with similar projects in two areas. The sidewalks along the northeast portions of the Site are provided greater solar access as the building is setback from these sidewalks. In addition, the project provides a public plaza within the J Street right-of-way where pedestrians can enjoy a public space which will have almost full sun access on a year-round basis. This area takes advantage of its location adjacent to the existing King Promenade and the only potential shading will come from the Harbor Club towers in the early morning hours. The mid-day through later afternoon hours will remain sunny due to the lack of new development potential to the south.

### Findings for Exceptions

In addition to the criteria discussed above for the Exception to the base FAR and height limits, the Marina PDO requires that approval of Exceptions include an evaluation of the following criteria:

1. *Demonstration that the proposed exceptions implement the intent of the Marina Planned District and Urban Design Plan and Development Guidelines.*

The development meets the specific criteria for approval of FAR and height increases, and the Exceptions for solar shading, streetwall height, and active streetwalls do not conflict with the intent of the Marina Urban Design Plan as the development provides an attractive and unique architectural design, active and unique pedestrian uses along the important First Avenue pedestrian corridor, and a public plaza which will be a visual and active open space amenity for the district.

2. *The granting of the exceptions does not adversely affect the development of the residential community.*

While the amendments to the Redevelopment Plan and Marina PDO will result in a reduction in the amount of housing on this Site, the Marina District has experienced major residential growth over the last 4-5 years so that it is almost completely built out as envisioned with mixed-use and residential projects. The project will provide another open space area and unique commercial uses to enhance the neighborhood.

3. *The granting of the exceptions will have a beneficial impact on the residential community.*

The development will help create a more active neighborhood, adding entertainment and dining uses for the residents and visitors, as well as a public plaza/park. The Exceptions allow for a well-designed, attractive project which will replace the existing underutilized, unattractive site.

4. *The granting of an exception will not establish an adverse precedent for the consideration of future requests for exception.*

The Marina PDO's allowance for exceptions is intended to allow projects with innovative design solutions. The project's Exceptions are similar to other mid- and high-rise projects which have been constructed recently within the District.

5. *The design of the proposed development is distinctively San Diegan and architecturally superior.*

The architecture of the development utilizes the distinctive historic style associated with the California mission style, adapted to a high-rise structure, which is reminiscent of such structures as the Valencia Hotel in La Jolla and the buildings in Balboa Park through the use of arch forms, hipped roofs with glazed tile, trellis pergolas, and balconies with iron railings.

#### CONDITIONAL USE PERMIT

Under the Marina PDO, television broadcast studios are permitted in the Marina Planned District with approval of a conditional use permit ("CUP"). As part of the CUP, KUSI is allowed to conduct special events within the Event Area (comprised of both Park Parcel A and Park Parcel B as illustrated on Attachment No.1B-Page 1) within the new J Street Plaza up to 80 hours per month, subject to specific conditions of approval limiting the potential noise impacts. The proposed Conditional Use Permit 2003-33 is attached as Exhibit B. The following findings must be made in order to approve a CUP:

1. *The proposed use or development will not adversely affect the applicable land use plan.*

The Marina PDO permits television broadcast studios through this discretionary review process. The studio will occupy the first floor of the development and will provide the community, both residents and tourists alike, an ability to watch live broadcasts from observation areas both within, and outside of, the building. In addition, video screens are proposed on the south side of the building to provide pedestrians in the plaza an ability to view the broadcasts. Under the proposed conditions of approval for the CUP (which are identical to those previously approved in 2000), no adverse impacts to the land use plan would occur.

2. *The proposed use or development will not be detrimental to the public health, safety, and welfare.*

As outlined in the attached Mitigated Negative Declaration, the proposed studio and outdoor plaza activities will not create a significant adverse impact on the environment or the surrounding neighborhood.

3. *The proposed use or development will comply to the maximum extent feasible with the regulations of the Land Development Code.*

The development will meet all applicable requirements of the Marina Planned District Ordinance (the applicable land use ordinance) upon approval of the proposed amendments and Exceptions, as well as the Noise Ordinance and Land Development Code.

4. *The proposed use is appropriate at the proposed location.*

The proposed development is located along a major pedestrian corridor linking the Convention Center with Horton Plaza and the Gaslamp District. The proposed hotel use is compatible with the surrounding land uses and is well located to serve the Convention Center as well as other visitors. The public plaza, adjacent to King Promenade and across the street from the Children's Park, will add to the variety of public spaces within the District. The studio activities will provide a unique and exciting experience for pedestrians along First Avenue.

#### COMPREHENSIVE SIGN PLAN

As part of the KUSI Studio use, the applicant has submitted a comprehensive sign plan, which includes 2 video screens and a reader board which are proposed in order to create a unique and interesting area for pedestrians and studio observers within the public plaza area. The live broadcasting will provide a unique pedestrian experience and further enliven the downtown experience for tourists and residents alike. As part of the public review process in 2000, the developer lowered, and reduced the size of, the screens and reader board in order to minimize potential impacts of the screens on the surrounding neighborhood. As previously approved, the 11 x 14 foot screens (or other sizes within the 154 square foot limit) are located so that they are directed to the plaza area only and will not contain any sound transmissions. Given the screen's size, location, orientation, distance from the nearest residential units, and hours of operation, there will be no visual impacts due to significant glare or light. The video screens are located over 60 feet from the travel lanes of First Avenue, are located at an angle away from the street, and are obstructed by the proposed street trees along First Avenue. They will not be readily legible from the street and therefore will not pose a distraction for motorists.

The reader board lettering is limited to a maximum height of 18 inches. The reader board is located on the south wall facing onto the plaza where its visibility from the right-of-way is minimized. While the previously approved reader board was a single line running from close to First Avenue eastward under the video screens, the revised plans show a "grouped" reader board consisting of three stacked lines located between the two reader boards. This reconfiguration will reduce its visibility from First Avenue and avoids any potential distraction to vehicles.

### VACATION OF J STREET AND DESIGN OF THE J STREET PLAZA

As outlined in the discussion for the CUP above, J Street would be vacated and a public plaza would replace the existing surface parking lot. The plaza has been designed to provide a public amenity that would extend the King Promenade open space, and will be constructed and maintained by KUSI. The plaza has been designed to complement King Promenade and ensure that the area will be inviting to the general public through upgraded surface materials, open accessible pathways, and appropriately placed landscaping and bench seating. The design of the J Street Plaza has been revised to a more open plan providing greater pedestrian flow to Second Avenue from King Promenade and First Avenue.

### ENVIRONMENTAL REVIEW

As a result of the required amendments to the Centre City Redevelopment Plan and Marina PDO for the increase in commercial land use percentage, the preparation of an Environmental Secondary Study in compliance with the Master EIR and Subsequent EIR for the Centre City Redevelopment Project Area indicated that a Mitigated Negative Declaration (MND) was required for the development. A Draft MND was prepared and circulated for a 30-day public review period from October 15 to November 14, 2003. CCDC received 5 letters during this period, which are included in the Final MND along with responses to each of the issues raised in the letters. Because the environmental impacts of the proposed KUSI Mixed Use development are essentially the same as those which would occur from the potential development of the Site under the current land use designations, a Subsequent EIR was not required for the plan amendments or the proposed development. The MND, in conjunction with the MEIR and SEIR previously certified for the Redevelopment Project area, provides an analysis of the potential impacts from the project. Based on the mitigation measures listed in the Final MND, the development will not have any adverse impacts on the environment which were not evaluated in the Master EIR and/or fully mitigated.

### SUMMARY/CONCLUSION

Based on the above discussion, it is recommended that the City Council and Redevelopment Agency certify the Mitigated Negative Declaration of Environmental Impacts, and approve the Amended and Restated OPA and the Ninth Amendment to the Redevelopment Plan; that the City Council approve the amendment to the Marina PDO and CUP 2003-33 and Comprehensive Sign Plan 2003-33; and that the Redevelopment Agency approve Marina Development Permit 2003-33, including the Granting of Exceptions and the Basic Concept/Schematic Drawings for the KUSI Mixed Use Project.